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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**THE CINCINNATI INSURANCE
COMPANY**, an Ohio Company,

Plaintiff,

v.

GOOD GEORGE LLC, an Oregon limited
liability company and **MISSISSIPPI
PRODUCTIONS, INC.**, an Oregon
corporation,

Defendants.

Civil No.: _____

**COMPLAINT FOR DECLARATORY
JUDGMENT**

DEMAND FOR JURY TRIAL

Plaintiff The Cincinnati Insurance Company (“Cincinnati”) alleges as follows:

I. OVERVIEW OF ACTION

1. This insurance coverage lawsuit seeks a determination by the Court of Cincinnati’s obligations under a policy of insurance issued to Good George, LLC and Mississippi Productions, Inc. (collectively the “Insureds”). In October 2020, the Insureds’

sought coverage for business income losses arising from the prevalence of wildfire smoke and poor air quality on its premises and the Portland area generally. However, the wildfires and related smoke did not cause any direct physical damage or loss to the Insureds' property, which is a predicate for business interruption coverage under the insurance policy. Accordingly, Cincinnati seeks a declaration from this Court that the Insureds' business income claims are not covered under the Policy.

II. PARTIES

2. Plaintiff Cincinnati is a company incorporated under the laws of Ohio and has its principal place of business in Fairfield, Ohio.

3. Defendant Good George LLC ("Good George") is a company organized under the laws of Oregon with its principal place of business in Portland, Oregon. On information and belief, Good George has two members: Jim Brunberg, a resident of the State of Washington; and Kevin Cradock, a resident of the State of Oregon.

4. Defendant Mississippi Productions, Inc. ("Mississippi Productions") is a company incorporated under the laws of Oregon, with its principal place of business in Portland, Oregon.

III. JURISDICTION AND VENUE

5. There is complete diversity between the parties and the Court has jurisdiction pursuant to 28 U.S.C. § 1332 (Diversity of Citizenship) and 28 U.S.C. § 2201 (Declaratory Judgment).

6. This matter concerns disputed indemnity obligations under an insurance policy issued by Cincinnati to the Insureds. On information and belief, the Insureds' claimed losses are approximately \$75,000. Additionally, on information and belief, the Insureds have also

incurred attorney fees in excess of \$15,000. Under ORS 742.061, the Insureds stand to recover for such attorney fees if they recover any amount for the claimed losses.

Accordingly, this dispute is ripe for adjudication and the value of this contractual dispute exceeds \$75,000, exclusive of costs and interest.

7. Venue in the District of Oregon, Portland Division, is proper under 28 U.S.C. § 1391 and Local Rule 3-2(b) because the events giving rise to the claim occurred in Multnomah County, Oregon.

IV. FACTS

A. Factual background of the insurance claim

8. Beginning on September 9, 2020, the Portland metro area suffered from poor air quality as a result of nearby wildfires. The Insureds contend they closed their restaurants from September 9, 2020 through September 17, 2020 as a result of the wildfire smoke and generally poor air quality in the Portland metro area.

9. As a result of the closure, the Insureds claim to have incurred lost business income in an amount totaling approximately \$75,000.

10. The Insureds sought coverage for such losses under their property insurance policy with Cincinnati. Upon receiving notice of the asserted loss, Cincinnati opened a claim file and assigned it Claim No. 3633223 (the “Claim”).

11. Cincinnati investigated the Claim and concluded that there was no “accidental physical loss or accidental physical damage” to insured property caused by the presence of poor air quality and/or wildfire smoke. As a result, Cincinnati denied the Claim.

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B. The Insurance Policy

12. The Cincinnati Insurance Company issued Policy No. EPP 031 83 98 to the Insureds with effective dates of April 9, 2018 to April 9, 2021 (the "Policy").¹ With respect to Building and Personal Property Coverage, the Policy provides in relevant part:

SECTION A. COVERAGE

We will pay for direct "loss" to Covered Property at the "premises" caused by or resulting from any Covered Cause of Loss.²

The Policy defines the term "loss" as "accidental physical loss or accidental physical damage."³ The Policy further provides an itemized list of specific "Covered Property." Under the Policy, the term Covered Property does not include the air around or within the covered premises.⁴

13. The Policy's Building and Personal Property Coverage Form contains the following limited coverage for Business Income and Extra Expense:

b. Business Income and Extra Expense

SECTION C. DEDUCTIBLE does not apply to this Coverage Extension.

(1) Business Income

We will pay for the actual loss of "Business Income" and "Rental Value" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct "loss" to

¹ Ex. A (a true and correct copy of excerpts from the Policy).

² Ex. A at p. 2.

³ Ex. A at p. 8.

⁴ Ex. A at pp. 2-3.

property at a "premises" caused by or resulting from any Covered Cause of Loss. With respect to "loss" to personal property in the open or personal property in a vehicle or portable storage unit, the "premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises", whichever is greater.

With respect to the requirements of the preceding paragraph, if you are a tenant and occupy only part of the site at which the "premises" are located, for the purpose of this Coverage Extension only, your "premises" is the portion of the building that you rent, lease or occupy, including:

- (a) Any area within the building or on the site at which the "premises" are located if that area services or is used to gain access to the "premises"; and
- (b) Your personal property in the open (or in a vehicle or portable storage unit) within 1,000 feet of the building or 1,000 feet of the "premises", whichever is greater.

* * *⁵

14. The Business Income (And Extra Expense) Coverage Form similarly provides in relevant part:

SECTION A. COVERAGE

* * *

1. Business Income

- a. We will pay for the actual loss of "Business Income" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct "loss" to property at "premises" which are described in the Declarations and for which a "Business Income" Limit of Insurance is shown in the Declarations. The "loss" must be

⁵ Ex. A at pp. 6-7.

caused by or result from a Covered Cause of Loss. * * *⁶

15. Both Business Income coverages referenced in the preceding paragraphs provide coverage if, and only if, the suspension of the Insureds' operations is caused by direct "accidental physical loss or accidental physical damage" to Covered Property.

16. The Insureds' suspension of their respective restaurant businesses arose from poor air quality in the Portland metro area, not from any "accidental physical loss or accidental physical damage" to covered property. As a result, there is no coverage under the Policy for the Insureds' claimed losses.

17. In addition, the Policy excludes coverage "for 'loss' caused by or resulting from" wear and tear, or smog:

b. Exclusions

* * *

- (2) We will not pay for "loss" caused by or resulting from any of the following:

* * *

(d) Miscellaneous Causes of Loss

- 1) Wear and tear;

* * *

- 3) Smog;⁷

⁶ Ex. A at p. 11.

⁷ Ex. A at pp. 4-5.

18. Accordingly, to the extent that the Insureds' claimed losses were caused by or resulted from wear and tear (*i.e.*, dirty air filters needing replacement) and/or smog, there is no coverage for such losses under the Policy.

**V. NO DUTY TO INDEMNIFY GOOD GEORGE OR
MISSISSIPPI STUDIOS FOR BUSINESS INCOME
LOSSES
(Declaratory Judgment)**

19. Cincinnati incorporates by reference and re-alleges the allegations contained in paragraphs 1 through 18 above.

20. Based on the Policy and for the reasons discussed above, the Policy does not provide coverage for the Insureds' Claim arising from losses caused by the presence of wildfire smoke and poor air quality.

21. Accordingly, Cincinnati seeks a judgment from this Court declaring that Cincinnati has no duty to indemnify the Insureds for any such losses caused by the presence of wildfire smoke and/or poor air quality, including any Claim for business income coverage for the period where the Insureds suspended their operations due to such wildfire smoke and/or poor air quality.

VI. JURY TRIAL DEMAND

22. Cincinnati requests a trial by jury.

VII. PRAYER FOR RELIEF

Cincinnati seeks judgment as follows:

1. For a declaration that Cincinnati has no duty to indemnify Good George, LLC for any of the claimed losses arising from wildfire smoke and/or poor air quality;

2. For a declaration that Cincinnati has no duty to indemnify Mississippi Productions, Inc. for any of the claimed losses arising from wildfire smoke and/or poor air quality;

3. For Cincinnati's costs and disbursements incurred herein; and

4. For such other relief as the court deems just and proper.

DATED: April 28, 2021

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